

At the Bar

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HBO's trial of James Earl Ray may stir

sensation, but will it produce revelation?



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Next week in Memphis, the ever-fuzzier line between fact and fiction, justice and show biz, history and entertainment, courtroom and television studio, will be blurred still further. That's when Home Box Office puts James Earl Ray on trial for the 1968 killing of the Rev. Dr. Martin Luther King Jr.

Everything about the ersatz trial, which will last for 10 days, is scrupulously genuine. It will take place in a genuine courtroom, feature a genuine prosecutor and defense lawyer appearing before a genuine (former) judge, be decided by a genuine jury. And, unlike Showtime's 1986 trial of Lee Harvey Oswald or Geraldo Rivera's trial of Joey Buttafuoco next Monday, there will be a genuine defendant: Mr. Ray will be questioned via satellite from his very genuine prison cell in Nashville.

Moreover, the three-hour distillation of the trial, to be broadcast on the 25th anniversary of the King assassination on April 4, may be genuinely entertaining. The only question is whether, for all the care with which it has been created, the program will produce anything genuinely new.

Mr. Ray has never testified in court, having pleaded guilty in 1969 in exchange for a 99-year term that spared him from the risk of the electric chair. But almost before the ink on the deal had dried, he asserted he had been the innocent victim of an elaborate set-up, orchestrated by a shadowy character named Raoul, and that he had been coerced into confessing. His pleas fell on deaf judicial ears — until, that is, HBO granted him certiorari.

In its promotional literature, HBO predicts that "Guilt or Innocence: The Trial of James Earl Ray" will be a "historic event." However the unscripted proceeding turns out, company propagandists say, this "no holds barred" trial is sure to produce revelations, and maybe make history.

"This could be our one best chance to get at the truth," said the program's producer, Jack Saltman of Thames Television, who "tried" Kurt Waldheim for Nazi war crimes.

The first task confronting the program's legal consultant, Burt Neuborne of New York University Law School, last April was whether enough uncertainty hovered over the King killing to make it interesting television. After immersing himself in the literature and debriefing William Pepper, Mr. Ray's lawyer since 1985, Mr. Neuborne concluded that there was. "I'm just dead flat certain we don't know all the facts," he said.

Like many years, he speculated that Mr. Ray, a career petty burglar who was arrested in London some weeks after the assassination, could not possibly have acted alone.

His second task was to insure that to the extent permitted by the passage of time and the exigencies of television, the production approximated a bona fide trial. Mr. Neuborne selected the lawyers, Mr. Pepper for the defense and, as prosecutor, W. Hickman Ewing, a former United States Attorney in Memphis. As judge, he chose Marvin E. Frankel, who sat for 13 years in the United States District Court in Manhattan. None is complaining about the pay, though none will say just what it is.

For the last several months, in person and by fax, the parties and the court have been picking jurors, reviewing procedures and discussing evidentiary matters, all to insure that things move smoothly once the cameras roll. Each side will have but 27 hours to present its case, with the minutes kept by chess clock.

Each side will present only a fraction of the witnesses who would have been called at a real trial, and not just because time is spare. Many simply have disappeared; the bulk of the time spent by investigators Mr. Ewing has hired has not been spent ferreting out new facts, but tracking down old faces. Some aren't interested in participating. Many more, from the Rev. Ralph David Abernathy, who stood near the prostrate Mr. King on the balcony of the Lorraine Hotel after the shooting, to the officer who found the weapon, have died.

Perhaps to keep up the suspense, HBO has not made Mr. Ray's lawyer available for interviews. Thus, it is impossible to say whether the defense has tracked down the elusive Raoul or found anything else that might be exculpatory. G. Robert Blakey, onetime chief counsel to the House Select Committee on Assassinations, doubts he has, but says he will not tune in to see.

Mr. Blakey, whose committee heard Mr. Ray tell his story, said that while Mr. Ray's accomplices, if any, remain murky, his role as triggerman is not. "As long as we have so many hours of television time to fill, this might be better than a soap opera, but not by much," he said. "James Earl Ray did it, period. He's where he belongs."

Why then would several distinguished lawyers participate in such a project? "Some people are mesmerized by television," he replied, "particularly when they are on it."